



05 SEP 2002

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In re Application of
ALLAIRE et al.
Application No.: 09/673,922
PCT No.: PCT/US99/08870
Int. Filing Date: 22 April 1999
Priority Date: 22 April 1998
Attorney Docket No.: 39573.830003
For: HYBRID MAGNETICALLY
SUSPENDED AND ROTATED
CENTRIFUGAL PUMPING APPARATUS
AND METHOD

DECISION ON REQUEST

This decision is in response to applicants' "Petition Under 37 CFR 1.181(a)" filed 24 June 2002.

BACKGROUND

On 22 April 1999, applicants filed international application No. PCT/US99/08870 which claimed a priority date of 22 April 1998 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 October 1999. The international application named Paul Allaire, Gill Bearnson, Ron Flack, Don B. Olsen, James W. Long, B. Ajit Kimar; Pratap S. Khanwilkar, Jeffrey Decker, and Michael Baloh as inventors. A Demand for international preliminary examination was filed prior to 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee expired at midnight on 22 October 2000.

On 20 October 2000, applicants filed a transmittal letter for entry into the national stage accompanied by, *inter alia*: the requisite basic national fee; a copy of the international application; and an oath and declaration.

On 08 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) and Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the declaration filed 20 October 2000 was defective because inventors Jeffrey Decker and Michael Baloh names and signatures were missing from the declaration. Additionally, the declaration was executed by M. Mary Sinnot, who has not been named in the international application. The notification set a one month time limit in which to respond.

On 08 December 2000, applicants filed "Petition to Correct Inventorship under 37 CFR 1.48(a);" "Petition Under 37 CFR 1.183 for Waiver of Assignee Consent"; and "Petition Under 37 CFR 1.183 for Waiver of a New Oath." In a decision dated 21 February 2001, applicants' petitions were dismissed without prejudice.

On 21 August 2001, applicant filed "Renewed Petition Under 37 CFR 1.48(a)" and "Petition Under 37 CFR 1.47(a)."

On 24 August 2001, applicant filed "Supplemental Response to the Decision to Request" which included an executed declaration of non-signing inventor, Michael Baloh.

In a Decision dated 27 November 2001, applicants' "Renewed Petition Under 37 CFR 1.48(a)" was dismissed without prejudice; applicants' "Petition Under 37 CFR 1.47(a)" was dismissed as moot.

On 10 June 2002, the United States Elected Office mailed a NOTIFICATION OF ABANDONMENT UNDER 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the Decision mailed 27 November 2001.

On 24 June 2002, applicants filed the present Petition under 37 CFR 1.181 to withdraw holding of abandonment.

DISCUSSION

A. Petition under 37 CFR 1.181(a)

Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by applicants, title of invention, and the docket number. The receipt itemizes, among other things: a Response to Decision on Request mailed 27 November 2001; Supplemental Declaration of Jeffrey Decker; and Supplemental Declaration of Michael Baloh. The receipt is stamped "Rec'd. PCT/PTO 17 JAN 2002" across its face is sufficient to indicate that the papers were in fact received in the Office on 17 January 2002.

The holding of abandonment is withdrawn.

B. Petition Under 37 CFR 1.497(d)

In the instant case, the international application named Paul Allaire, Gill Bearnson, Ron Flack, Don B. Olsen, James W. Long, B. Ajit Kimar; Pratap S. Khanwilkar, Jeffrey Decker, and Michael Baloh as inventors. In a decision dated 27 November 2001, applicants were required submit clarification of inventorship from Michael Baloh and Jeffery Decker. The Supplemental Declaration of Jeffery Decker and Michael Baloh filed 24 June 2002 indicate that, "I am correctly named as an inventor on United States Application no. 09/673,922 . . . I am a co-inventor of the subject matter claimed in the United States Patent Application no 09/673,922." Therefore, applicants' request under 37 CFR 1.497(d) is granted.

CONCLUSION

For the reasons discussed above, applicants' request under 37 CFR 1.181 to withdraw holding of abandonment is **GRANTED**.

Applicants' request under 37 CFR 1.497(d) is **GRANTED**.

A review of the application papers reveals that applicants have completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be given an international application filing date of 22 April 1999 and a date of **24 August 2001** under 35 U.S.C. 371.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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